

## EDITORS' PREFACE

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The Oxford Handbook series brings together top researchers to explain the state-of-the-art knowledge in a given field of study. The Oxford Handbook on International Adjudication shares this purpose, but it is also more ambitious. We seek to significantly advance a new field of study: the interdisciplinary investigation of international adjudication.

In 1997, the Project on International Courts and Tribunals (PICT) was jointly established by the Center on International Cooperation (CIC), at New York University, and the Foundation for International Environmental Law and Development (FIELD), at the School of Oriental and African Studies, University of London. Cesare Romano and Shepard Forman, in New York, and Ruth Mackenzie and Philippe Sands, in London, spearheaded the early days of PICT's work. Since those days, PICT has evolved into a network of researchers and practitioners sharing an interest in the study of international courts and tribunals, and the implications of their operation for the broader field of international law. Nowadays, PICT is directed by five academics: Philippe Sands (University College London), Thordis Ingadottir (Reykjavik University), Ruth Mackenzie (University of Westminster), Cesare Romano (Loyola Law School Los Angeles) and Yuval Shany (Hebrew University). Members of the network regularly cooperate with one another, in various combinations and with other interested individuals (such as Karen Alter, as in the case of this handbook) and institutions (for instance, the Amsterdam Centre for International Law), to generate innovative research activities and to further knowledge about international adjudicative bodies.

PICT's main contribution to the field has been to look at specific international adjudicative bodies as the pieces of a larger whole—an emerging international judiciary, with much in common and much to learn from each other—rather than as separate institutions, as had been done hitherto. PICT's website (<<http://www.pict-pecti.org>>) provided the first portal through which newcomers could learn about each and every international judicial body, providing scholars data to start making comparisons across the board.

Others soon joined the effort. The Brandeis Institute for International Judges picked up the task of helping the actors directly involved in international adjudication—international judges—learn from one another so as to address judicial, ethical, and management questions and improve international adjudication.

The Brandeis Institute's reports and periodic email updates help scholars stay abreast of developments across international adjudicative bodies. In 2002, the London "home" of PICT moved to University College London, where the Centre for International Courts and Tribunals was established. Philippe Sands and Ruth Mackenzie continued their pioneering work from their new base, addressing key questions of ethics and independence of international judges and practitioners.

Thus, thanks to the hard work of a small group of dedicated scholars and funding from several foundations sponsoring them—including the Ford, MacArthur, Hewlett, and JEHT foundations, the European Union and many others—knowledge about international adjudicative bodies has blossomed.

The first generation of scholarship, pre-PICT, focused primarily on legal documents and single-institution studies, with a few basic comparisons made across like institutions. Most studies remained tied to a single discipline, and there was very little interdisciplinary cross-fertilization. Had this handbook been written 15 years ago, when the first-generation scholarship was the accepted standard, it would have included theorizing based on one or maybe two international adjudicative institutions; empirical analysis of a small handful of international legal systems; and side-by-side descriptions of like systems.<sup>1</sup> It would have had, for example, a chapter focusing on the history of the World Trade Organization's adjudicative system, another on the law and procedure of WTO dispute adjudication, and a third on empirical aspects of WTO dispute settlement. A first-generation handbook would have put the International Court of Justice at the forefront. It would have approached international adjudication mostly as a dispute settlement means. It would have focused primarily on adjudicative institutions based in Europe. It would have included chapters that described in formal terms how new adjudicative bodies were supposed to operate—but not their actual workings, and least of all the actual workings of those located in the developing world. In other words, it would have looked very different from this handbook.

We believe now it is time for a somewhat different approach. Perhaps thanks to those early pioneering projects, and surely thanks to a much larger set of institutions to study, scholars and practitioners now collectively seem ready to engage in more ambitious research. This handbook epitomizes what the second generation of scholarship on international adjudication embodies. It introduces a new understanding of international adjudication that is broader than a focus on a few well-known permanent courts. Whereas before each international adjudicative body seemed *sui generis*, unique and isolated, now we can explore how different institutional designs, political contexts, and compositions shape judicial decision-making and the ability of international adjudicative institutions to affect political outcomes. For legal scholars, comparatively studying international adjudicative mechanisms

<sup>1</sup> See e.g., R Mackenzie, C Romano, P Sands, and Y Shany (eds.), *Manual on International Courts and Tribunals* (Oxford University Press 2009).

can illuminate how different institutions facilitate the resolution of different types of disputes—and perhaps how to improve the design of international adjudicative mechanisms. For social scientists, the possibility of comparing like institutions provides theoretical leverage to develop and test hypotheses. By comparing international legal regimes with and without associated international adjudicative bodies, we can also gain insight into how establishing international adjudicative bodies influences state decision-making, domestic politics, and international relations more generally.

Our approach in this handbook departs from old-school scholarship in a number of ways. We decided to focus on “international adjudication” rather than the narrower field of international judicial bodies because we recognize that non-permanent international adjudicative bodies are part of the broader trends toward international legalization and the judicialization of international relations. In fact, as André Nollkaemper does in this volume, it is increasingly plausible to consider national courts, whenever applying international law, as part of this broad universe of international adjudicative procedures.

Since most scholars are still specialized in a single institution, we asked our contributing authors to do their best to think across international adjudicative systems. For example, we asked William Schabas to write on criminal courts, not just the International Criminal Court. We also organized the chapters to facilitate comparisons. We asked the authors of parts IV, V, and VI to write comparatively about different approaches to a number of critical issues, including electing and selecting judges, involving third parties in adjudication, deciding on remedies, fact finding, and managing financing.

Admittedly, broadening the focus can wreak havoc on efforts to create firm categories and lists of adjudicative bodies. We decided to add visual representations of current international adjudicative bodies, but careful readers will immediately recognize that our visual images do not fully correspond to the categories and lists of adjudicative bodies discussed in this volume. The problem is in part scholarly disagreement on categories, but the source of the disagreement is the changing world around us. International adjudicative bodies now span well-established categories. Sean Murphy's focus on international judicial bodies analyzes their core features and the role they continue to play in an increasingly complex world of dispute settlers. David Caron questions how one can even ascertain if a court is permanent given that certain “temporary” claims and compensation bodies, as well as certain international criminal tribunals, can operate for indefinite periods of time. William Schabas discusses the difficulty in demarcating international criminal enforcement from nationally based adjudicative bodies created with international input that apply international criminal law and include judges and prosecutors from outside the region. Solomon Ebobrah points out that there are many courts of regional integration agreements that exercise jurisdiction over human rights legal instruments. A recent article by Alexandra Huneus in the *American Journal of International Law*

examines the Inter-American Court of Human Rights as an international criminal court.<sup>2</sup> Still, taxonomies and categories, however changing and imperfect, provide useful roadmaps. They make it possible to immediately grasp the scope of the field and the essential traits of the classified body.

We put together a volume that is theoretically informed and interdisciplinary, even though doing so caused some overlap across chapters. For example, the selection of international judges chapter is a lawyer's approach to how international judges are or should be selected, but we also needed a separate chapter on "who becomes a judge" to answer the more sociological question of who actually makes it through the international judicial selection labyrinth. We then needed an additional chapter focused on "international judicial behavior" to connect the questions of how international judges are selected, who international judges actually are and how this information influences international judicial behavior.

Much scholarly conversation, and indeed the vast majority of the scholarship on international adjudication, is still written from within a single paradigm. Part III of this book includes chapters on specific theoretical approaches to studying international adjudication, including chapters on transnational legal process theories, political science theories, and philosophical and sociological approaches. Mark Pollack asked us if we really needed a separate chapter on political science approaches, as he saw the paradigms invoked in political science scholarship already present in the transnational politics and sociological chapters—and in chapters on empirical questions, such as the effectiveness of international adjudicators and international judicial behavior. However, we asked Professor Pollack to write a political science chapter because political science is one of the few places where scholars increasingly speak across paradigms. His hesitation is itself a positive development in the study of international adjudication. It suggests that we are beginning to transcend long-defended disciplinary confines.

The third generation of scholarship on international adjudication will be undertaken by a new kind of scholar. Nearly all of those contributing to this volume were traditionally trained. We earned our law, sociology, and political science degrees within disciplinary silos, and then largely self-trained to be able to study the phenomenon of international adjudication across institutions. Some of us took to co-authoring to ensure that empirical work would be legally accurate and theoretically informed. Yet, the next generation of scholars has opportunities we did not. For one thing, now, in the age of the internet, data and information are much easier to find. Moreover, there are now joint doctoral programs where scholars can gain both law and social science degrees. There are now special programs that teach experts in one discipline about scholarly approaches in other disciplines.

<sup>2</sup> A Huneeus, "International Criminal Law by Other Means: The Quasi-Criminal Jurisdiction of the Human Rights Courts" (2013) 107 AJIL 1.

For example, lawyers and legal scholars can be trained to do statistical work, qualitative investigations, fieldwork, experimental studies, and ethnographic studies, thus bringing methodological strengths from one discipline to questions of study in related fields. The combination of much wider access to information, much deeper comparative knowledge about international adjudicative systems, and scholars trained to reach outside academic silos will transform the study of international adjudication. And all of this, in turn, will probably transform international adjudication itself, as the opening of scholarship in the field will engage adjudicative institutions in a richer dialogue with members of their academic, political, and social environments.

This handbook showcases the latest scholarship from the disciplines of law, political science, history, legal philosophy, sociology, and even graphic design. We organized the handbook to be accessible to those who know little, yet interesting and helpful for those who are already part of this burgeoning field of international adjudication. Parts I and II provide an updated mapping of the international adjudicative system and begin to explain how we got to this system as it exists today. Part III provides a window into some of the major theoretical approaches and debates applied to the study of international adjudication. Part IV showcases some of the most salient issues in contemporary international adjudication, revealing how empirical and middle-range theorizing can be used to study international adjudication in action. Part V defines the key actors in international adjudication—those who make the process of international adjudication what it is today. Finally, Part VI considers some key legal and procedural factors essential to understanding how international adjudication actually works in practice.

This book is meant to be used alongside a number of useful internet resources. The PICT website,<sup>3</sup> and its sister website focused on African international judicial bodies,<sup>4</sup> remain useful first-stop resources for scholars who want to learn about individual international legal systems. A new Danish Center of Excellence—iCourts, sponsored by the Danish National Research Foundation—is the latest addition to the field. It aims to become a repository for empirical investigations and scholarly contributions to the study of international courts and tribunals.<sup>5</sup> It has updated links to data sources and shares data sets compiled by authors (including taking over the maintenance of Erik Voeten's personal website<sup>6</sup> on quantitative empirical research). Another new Norwegian center of excellence, PluriCourts, focuses

<sup>3</sup> Project on International Courts and Tribunals <<http://www.pict-pcti.org/>> accessed April 25, 2013.

<sup>4</sup> PICT, "African International Courts and Tribunals" <<http://www.aict-ctia.org/>> accessed April 25, 2013.

<sup>5</sup> The Danish National Research Foundation, "iCourts, the Centre of Excellence for International Courts" <<http://jura.ku.dk/icourts/>> accessed April 25, 2013.

<sup>6</sup> E Voeten, "International Courts Data" <<http://www9.georgetown.edu/faculty/ev42/ICdata.htm>> accessed April 25, 2013.

on legitimacy-related questions given the plurality of adjudicators assessing state respect for international norms.<sup>7</sup>

There are many questions about international adjudication that we did not ask because we cannot answer them yet. But we asked contributors to flag these questions so as to plant the seeds for future scholarship. The larger project of studying international adjudication has already spread around the globe. A number of universities are organizing conferences and publishing books on different aspects of international adjudication, such as how international adjudicative bodies develop and maintain political legitimacy, how they can be more effective, and what relationship should exist between national and international institutions. Asking these pertinent questions—and applying new methods of analysis—is the task we turn over to our colleagues and readers, and also continue to pursue ourselves.

Finally, we would like to thank all those whose support, work, and patience made this handbook possible: At Oxford University Press, Merel Alstein and John Louth for encouraging us to pursue this project at a time when each of us had more than a full plate, and Anthony Hinton for helping us with the many chores that publishing a book entails. Our heartfelt thank you goes to our authors for agreeing to work with us on this long project, for their excellent contributions and for redoubling their efforts when asked. A special thank you goes to Francesco Sebregondi of the Forensics Architecture Project at Goldsmiths, University of London, who generated, under very tight time constraints, the creative tables and charts that provide a visual approach to the topic of international adjudication. Finally, we are grateful to Loyola Law School Los Angeles for awarding Cesare Romano the W Joseph Ford Fellowship, allowing him to dedicate the time and effort it took to see this project to completion, and for making it possible to recruit the small team of research assistants who facilitated completion of this project: Sarah Frost, Negar Tehrani, Janna Brancolini, and Emerald Law (students of Cesare Romano's course on International Jurisprudence), and Amber Bissell.

CR/KJA/YS

Santa Monica, CA/Evanston, IL/Reut, Israel

June 2013

<sup>7</sup> Faculty of Law, University of Oslo, "PluriCourts: The Legitimate Roles of the Judiciary in the Global Order" <<http://www.pluricourts.net/>> accessed April 25, 2013.